

JACK PAUL FYALL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KATHY DYER AND ROBERT DYER )  
INDIVIDUALLY AND AS )  
REPRESENTATIVE OF THE )  
ESTATE OF GRAHAM DYER, )  
 )  
Plaintiffs, ) ) CIVIL ACTION NO.  
VS. ) ) 3:15-CV-02638-B  
 )  
CITY OF MESQUITE, TEXAS; )  
JACK FYALL; RICHARD HOUSTON; )  
ALAN GAFFORD; ZACHARY SCOTT; )  
WILLIAM HEIDELBERG; PAUL )  
POLISH; JOE BAKER; BILL )  
HEDGPETH, )  
 )  
Defendants. )  
\*\*\*\*\*

VOLUME 1  
ORAL DEPOSITION OF  
JACK PAUL FYALL, II  
JULY 12, 2017  
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ORAL DEPOSITION OF JACK PAUL FYALL, II, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 12th day of July, 2017, at 9:21 a.m. to 12:13 p.m., before Laurie Purdy, CSR, in and for the State of Texas, reported by machine shorthand, at the Mesquite Police Department, 777 North Galloway, in the City of Mesquite, County of Dallas, State of Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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1 Q. (By Ms. Hutchison) We've already  
2 established Graham was intoxicated.

3 A. Yes.

4 Q. And we've already established that  
5 intoxicated people may or may not know what's going  
6 on, right?

7 A. Yes.

8 Q. So from that, we know that at the time  
9 Graham may or may not have known what was going on or  
10 be able to follow commands?

11 A. Yes.

12 Q. So what happened when you tried to put  
13 Graham into the car?

14 A. He actively resisted and he ended up  
15 kicking me in the chest when we were trying to place  
16 him in the passenger's compartment of the squad car.

17 Q. And where on your chest did his feet hit?  
18 Right in the middle?

19 A. In the center, yes, ma'am.

20 Q. Did it knock you down?

21 A. No.

22 Q. Did it leave a mark or a bruise?

23 A. No.

24 Q. Did it hurt?

25 A. No.

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1 Q. So what was your response to him kicking  
2 you in the chest?

3 A. To get him to stop kicking -- I had to get  
4 him to stop kicking, so at that time, I deployed my  
5 Taser in a drive-stun mode, and I drive-stunned him  
6 in the leg.

7 Q. And what was his response to being  
8 drive-stunned in the leg?

9 A. He felt pain, as would be expected from a  
10 drive-stun. And after that he stopped kicking.

11 Q. How many times did you drive-stun him?

12 A. For a period of five seconds, I believe.

13 Q. And did you believe that allowed you the  
14 opportunity to get him into the back of the car?

15 A. Yes.

16 Q. And how did you do that?

17 A. Do -- how did I get him in the car, or how  
18 did I form that opinion?

19 Q. How did you get him in the car?

20 A. I was pushing from the passenger side.

21 Another officer pulled his body across from the  
22 driver's side. At that time, we communicated to  
23 Sergeant Houston, because the sergeant carried leg  
24 restraints, so to get the leg restraints so we could  
25 control his legs during the transport. So I kind of

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1 Q. What's your understanding of it?

2 A. It's a method of speaking to people. A  
3 method of speaking to people in a crisis.

4 Q. And it's geared toward people who are not  
5 in their right mind, right?

6 MR. TOOLEY: Objection, form.

7 A. I don't know what it's geared to. It's  
8 another tool available for dealing with those kind of  
9 people.

10 Q. (By Ms. Hutchison) Well, the basic TCOLE  
11 training in crisis intervention is 40 hours, right?

12 A. Yes.

13 Q. And then there's advanced after that,  
14 right, available?

15 A. Yes.

16 Q. Did you take the advanced?

17 A. At the time, I don't think I had any  
18 advanced.

19 Q. So what did you learn in your 40 hours  
20 about crisis intervention and the techniques of it?

21 A. That has been 10 years ago now, but just a  
22 method of talking to people.

23 Q. But what method of talking to people?

24 A. I guess getting them to see the reason, I  
25 guess. I don't remember any specifics on the course

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1 actually.

2 Q. What tools were you given during that  
3 training that you could use on encountering someone  
4 who was in a mental crisis?

5 A. You go over recognizing certain  
6 statements. Statements of like -- recognizing  
7 statements of self-harm, suicidal thoughts, stuff  
8 like that.

9 Q. Okay. So they taught you how to recognize  
10 statements of harm. Anything else?

11 A. Like -- most of it was geared toward  
12 suicidal persons, as far as I can remember.

13 Q. Most of it was geared toward suicidal  
14 people?

15 A. That's what I remember.

16 Q. When you arrived at the scene at the middle  
17 school, would you describe the scene as secure?

18 A. Yes.

19 Q. Did you hear Graham stating that he didn't  
20 know where he was or what was going on?

21 A. I don't recall any specific statements that  
22 he made.

23 Q. Did you see or hear any officers explaining  
24 to Graham where he was or what was happening to him?

25 A. I don't recall any specific officer

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1 speaking to him.

2 Q. Did you make any attempt to explain to  
3 Graham where he was or what was happening to him?

4 A. No, ma'am.

5 Q. Why not?

6 A. Why didn't I explain to him?

7 Q. Right. Why didn't you tell him what was  
8 happening and where he was?

9 A. I don't -- are you talking about during the  
10 actual escort to the vehicle or just in general of  
11 him laying there?

12 Q. At any time. When he was laying on the  
13 ground, when you escorted him to the car, when you  
14 were trying to get him into the back seat. At any  
15 time.

16 A. I didn't feel like I needed to tell him  
17 what was going on or what was happening.

18 Q. Why?

19 A. He was already detained by the time I  
20 arrived. I didn't have anything to add as far as  
21 speaking to him. Whatever led him to be detained had  
22 already been said, so I didn't say anything to  
23 contribute to that.

24 Q. You didn't what?

25 A. I didn't say anything that contributed to

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1 that as far as whatever he did or said that led him  
2 to be detained. By the time I arrived, he was  
3 already detained, so whatever needed to be said was  
4 said.

5 Q. Was there anything that prevented you --  
6 when he was yelling, Where am I, or, What's going on,  
7 was there anything that prevented you from responding  
8 to that and telling him?

9 A. No. I believed he was intoxicated, and I  
10 left it to that.

11 Q. But isn't part of the crisis intervention  
12 techniques that you were taught was if someone is in  
13 a mental crisis, to talk calmly to them and to  
14 respond and answer their questions and tell them  
15 where they are and what's going on?

16 A. It might have been. I don't recall any  
17 specific course instruction as far as that goes.

18 Q. I'm going to try to play this video.

19 MR. TOOLEY: Is this a good time to  
20 take a break?

21 MS. HUTCHISON: Oh, sure.

22 (Recess taken from 10:37 to 10:50.)

23 Q. (By Ms. Hutchison) So hopefully you can  
24 see on the screen in front of you the video. This is  
25 from -- it's Disk 1, Video 1, starting out with the

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1 MR. TOOLEY: Objection, form.

2 Q. (By Ms. Hutchison) Or what are you doing  
3 at that point?

4 A. I think I'm going to get a pair of gloves  
5 from the ambulance, because I think he's pointing to  
6 the ambulance, that the gloves are in this part of  
7 the ambulance. So I think that's what I'm doing.

8 Q. And why did you want gloves?

9 A. We were fixing to place him under arrest  
10 and he was drenched in sweat, and I didn't want his  
11 bodily fluids on me when I escorted him to the car.

12 Q. So at that point, how did you know that you  
13 were going to be placing him under arrest?

14 A. I don't recall specifics that were said.

15 Q. But that was the reason that you were going  
16 to get gloves, is to place Graham under arrest?

17 A. He was going to be handled, yes, so I was  
18 going to go get gloves.

19 (Video begins to play.)

20 (Video stops playing.)

21 Q. So is that you? At 9:59, is that you  
22 coming back?

23 A. Yes.

24 (Video begins to play.)

25 (Video stops playing.)

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1 paramedics to the scene so they can do an evaluation  
2 and tell you this person either needs to go to the  
3 hospital or it's okay for this person to go to jail,  
4 right?

5 A. Yes.

6 Q. But if the paramedic says, I can't make  
7 that determination because I can't check this person,  
8 then you still don't know whether they need to go to  
9 the hospital versus go to jail, right?

10 A. If they don't tell me that this person  
11 needs to go to the hospital, then we don't take them  
12 to the hospital. So if he doesn't tell me or us this  
13 person -- we are going to transport this person or  
14 this person needs to go to the hospital, we will take  
15 him, or we will take this person to the hospital, can  
16 you ride in the back of the ambulance with us -- if  
17 they don't say, Hey, this person needs to go to the  
18 hospital, then we take them to jail.

19 Q. So if they say, Hey, we can't tell you one  
20 way or the other whether he needs to go to the  
21 hospital or jail because we can't check him, that to  
22 you is a green light to take them to the jail?

23 MR. TOOLEY: Objection, form.

24 A. If they're not insisting to go to the  
25 hospital, then we take them to jail.

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1           A.    My understanding was if they didn't insist  
2 on taking him to the hospital, then we were going to  
3 take him to jail.

4           Q.    What was your understanding of what their  
5 assessment of Graham Dyer was --

6                    MR. TOOLEY: Objection, form.

7           Q.    (By Ms. Hutchison) -- other than they  
8 didn't take him to the hospital? But what was your  
9 assessment of what they found when they encountered  
10 him?

11                  MR. TOOLEY: Are you asking what his  
12 understanding was of that?

13                  MS. HUTCHISON: Yes.

14           A.    My understanding was that he didn't need to  
15 go to the hospital in their opinion.

16           Q.    (By Ms. Hutchison) And that was based  
17 solely on the fact that they didn't insist that he  
18 go?

19           A.    Yes.

20           Q.    You didn't have any other information from  
21 the paramedics?

22           A.    No.

23           Q.    Could Graham have been transported to the  
24 hospital in a patrol unit?

25           A.    If you're saying it's possible, yes.

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1 A. Yes.

2 Q. So did the bite happen before that?

3 A. Yes. See -- I don't know if you can  
4 enlarge that back seat view, but you can see it,  
5 because I just saw it the other day.

6 Q. On the --

7 A. The back seat camera view.

8 Q. You can see it from the back seat camera  
9 view?

10 A. Yes, ma'am.

11 Q. So that should be in the Heidelberg dash  
12 cam video?

13 A. Yes, whoever's car that was.

14 Q. Okay. And I can play that in a minute,  
15 because for some reason I'm thinking that video  
16 doesn't start as early as this one does. But it was  
17 before this that we see at 12:19 on this video,  
18 right?

19 A. Yes. 20 to 30 seconds before maybe.

20 Q. Okay. So you're going to hear in a couple  
21 of seconds what sounds like, Stand up before I tase  
22 your ass. So I want you to listen and see if that's  
23 what is being said and if you're the one saying it.

24 (Video begins to play.)

25 (Video stops playing.)

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1 Q. Did you hear that?

2 A. Yes.

3 Q. Who said that?

4 A. I believe I said it.

5 Q. Did you have your Taser out at the time?

6 A. No.

7 Q. And then in a couple more seconds you'll  
8 hear, I'm going to tase your mother fucking ass if  
9 you don't behave.

10 And what do you have -- Graham is out  
11 of the video at this point. He's not in the  
12 vehicle. What is he doing?

13 A. I believe he's on the ground just outside  
14 the door there, the rear passenger side door.

15 Q. So when you pulled him out -- when you  
16 reached in and pulled him out of the seat, he fell on  
17 the ground?

18 A. I don't recall if he fell or if he was  
19 sitting on his butt or what his body position was.

20 Q. Were you the only person that had your  
21 hands on him at the time?

22 A. On that side of the vehicle -- I don't  
23 recall. I had my hands on him. I don't know if I  
24 was the only one.

25 Q. And did you stand him up?

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1 A. I believe I tried to get him back in the  
2 car. Not necessarily stood him up full height, but  
3 tried to get him back into the vehicle.

4 Q. And what was Graham doing?

5 A. He wasn't being cooperative.

6 Q. In what way?

7 A. In getting into the vehicle.

8 Q. But was he -- what was he doing physically?

9 A. He was not cooperating, not exerting any  
10 physical effort to sit in the car, I would say.

11 Q. Was he kicking or biting or hitting or  
12 doing anything like that at that time?

13 A. Not at this time.

14 (Video begins to play.)

15 (Video stops playing.)

16 Q. Was that you that said that, I'm going to  
17 tase your fucking ass if you don't behave?

18 A. Yes.

19 Q. And did you have your Taser out at that  
20 time?

21 A. I don't recall.

22 Q. So you've got your hand -- at this point,  
23 at 12:31 on the video, you've got your hand on  
24 Graham's head?

25 A. Yes.

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1 Q. To push him into the car?

2 A. To control his head.

3 Q. Okay. What do you mean to control his  
4 head?

5 A. I've just been bit, so to best control his  
6 head -- away from his mouth, I grabbed his hair from  
7 the back there.

8 (Video begins to play.)

9 (Video stops playing.)

10 A. And I was just kicked right there.

11 Q. So at 12:33, he kicks you?

12 A. Yes.

13 (Video begins to play.)

14 (Video stops playing.)

15 Q. Do you tase him right away after he kicks  
16 you?

17 A. Yes.

18 Q. So is that the sound that's heard at like  
19 12:36?

20 A. If it's a crackling sound, then, yes.

21 Q. Yeah. Let me back it up and see if you can  
22 identify that. So if you can just tell us at what  
23 point on the time counter at the bottom the tasing  
24 occurs.

25 (Video begins to play.)

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1 button, but it's a total period of five seconds, a  
2 continuous time span, from what I remember.

3 Q. So look at about 14:16.

4 (Video begins to play.)

5 (Video stops playing.)

6 Q. Could you tell what happened at the time  
7 when Graham said, What the F was that?

8 A. No, ma'am.

9 Q. What was going on over on your side of the  
10 car at that time?

11 A. I'm holding his upper body with my left  
12 hand, and with my right hand I'm trying to hold his  
13 legs down, because his legs -- his lower ankle should  
14 be tied up in the leg restraints. And I don't know  
15 who it was, but -- there's a buckle on the end that  
16 you're supposed to pull outside of the door and then  
17 shut the door on the belt. So my hands -- I had my  
18 left hand up across his upper chest, neck area, and  
19 then my right hand should be holding his legs down to  
20 help keep him from thrashing. I don't know --  
21 somebody else -- you can see the cluster of officers  
22 there -- was trying to grab the belt and get  
23 clearance to shut the door.

24 Q. Could you see what was causing the flashes  
25 of light and making the sound at 14:16 on that side?

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1 A. Yes. It wasn't that night.

2 Q. And you don't remember the context of that  
3 conversation?

4 A. No, ma'am.

5 Q. Like how did that come up, why were y'all  
6 talking about it?

7 A. No, ma'am.

8 Q. And what were you told?

9 A. I was told that Mr. Dyer had a Taser  
10 applied to his groin area. Some said testicles, some  
11 said groin area. Then I found out which officer  
12 applied it.

13 Q. And was that not a surprise?

14 A. It was a -- I didn't know it happened at  
15 the time, so it was news to me.

16 Q. I didn't know if you were saying that you  
17 weren't surprised to find out which officer did it.

18 A. No, that's not what I'm saying. I'm  
19 saying, like I said, when I was in the ambulance, I  
20 heard they stopped, and I didn't hear any further  
21 radio traffic to indicate that had happened. So I  
22 went back to the station, did the paperwork and  
23 statements and stuff, and then a few days to however  
24 long afterward, I heard what occurred, so --

25 Q. And was there a discussion amongst the

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1 attorneys in the action in which proceeding was  
2 taken, and further that I am not financially or  
3 otherwise interested in the outcome of the action.

4

5 Certified to by me this 8th day of August,  
6 2017.

7

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